

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

DURA CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3059

Decision No. CU-

350

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by the Weaver Division of DURA CORPORATION in the amount of \$3,372.60 based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are

a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

An officer of the claimant, DURA CORPORATION, has certified that the claimant's predecessor in interest, Weaver Manufacturing Company, was incorporated in the State of Illinois; that the said Weaver Manufacturing Company was purchased for cash and merged with Detroit Harvester Company in April, 1959; that Weaver Manufacturing Company was dissolved on June 30, 1959; that Detroit Harvester Company was incorporated in the State of Michigan on September 16, 1922; that Detroit Harvester Company changed its name to DURA CORPORATION on August 1, 1959; that Since July 1, 1959, DURA CORPORATION has operated the former Weaver Manufacturing Company as the Weaver Division of DURA CORPORATION; that on November 21, 1966, Walter Kidde & Company acquired all of the capital stock, assets (including this claim), and liabilities of DURA CORPORATION in exchange for 469,109 shares of stock in Walter Kidde & Company; that at that time DURA CORPORATION was merged with Walter Kidde & Company and was made a wholly-owned subsidiary and incorporated as a corporation of the State of New York; that Walter Kidde & Company is the sole stockholder of DURA CORPORATION; that Walter Kidde & Company was incorporated in the State of New York on January 2, 1917; and that at all times between 1959 and the presentation of this claim on April 28, 1967, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that as of October, 1967, 99.4% of the 13,915 stockholders of the parent corporation, Walter Kidde & Company, representing more than 97% of the total stock issued, are residents of the United States and, therefore, that only .6% of its stockholders are assumed to be citizens of foreign countries.

The record contains copies of letters from the Trust Company of Cuba to claimant's predecessor in interest, Weaver Manufacturing Company, all of which acknowledge that the drafts listed below, drawn on Compania Riera, Toro & Van Twistern, S.A. for merchandise shipped to Cuba, had been paid but that the bank was awaiting reimbursement releases from the Exchange Board, a Cuban Government agency:

<u>DRAFT NO.</u>	<u>AMOUNT</u>	<u>DATE PAID OR ACKNOWLEDGED</u>
7401	\$ 207.00	November 30, 1959
7406	67.95	December 19, 1959
7436	1,362.36	February 4, 1960
7441	152.79	February 10, 1960
7458	399.09	March 3, 1960
7459	1,045.41	February 29, 1960
7464	138.00	March 16, 1960

Claimant states that it has not received these funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019).

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred

<u>ON</u>	<u>AS TO</u>
December 1, 1959	\$ 207.00
December 20, 1959	67.95
February 5, 1960	1,362.36
February 11, 1960	152.79
March 1, 1960	1,045.41
March 4, 1960	399.09
March 17, 1960	138.00

The Commission has decided that in the certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date of which provisions are made for the settlement thereof.

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CERTIFICATION OF LOSS

The Commission certifies that DURA CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Thousand Three Hundred Seventy-Two Dollars and Sixty Cents (\$3,372.60) with interest thereon at 6% per annum from the respective dates of loss to the date of Settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

JAN 17 1968

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on FEB 27 1968

John F. ...
Clerk of the Commission

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

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